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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

10000-03 GRA-05A

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]
June 28, 2007

on _____

Signature

Typed or printed name Adam J. Forman

Application Number

10/806,354

Filed

March 23, 2004

First Named Inventor

Gregg R. Espenshade

Art Unit

3618

Examiner

Hau Van Phan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒attorney or agent of record. 46,707,
Registration number _____☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Adam J. Forman

Typed or printed name

(312) 291-0860

Telephone number

Junr 28, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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		Art Unit	Examiner
		3618	Hau Van Phan
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Adam J. Forman
Signature

Adam J. Forman

Typed or printed name

(312) 291-0860

Telephone number

Junr 28, 2007

Date

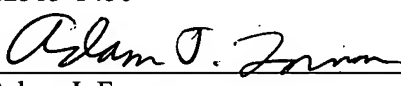
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Attorney Docket No.: 10000-03 GRA-05A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	)	CERTIFICATE OF MAILING
Gregg R. Espenshade)	
Serial No.: 10/806,354	)	I hereby certify that this paper and the
Title: Basket Assembly for Stroller	)	documents referred to as enclosed therewith
Filed: March 23, 2004	)	are being deposited with the United States
Group Art Unit: 3618	)	Postal Service as first class mail, postage
Examiner: H. Phan	)	prepaid, on June 28, 2007 in an envelope
	)	addressed to MS AF, Commissioner for
	)	Patents, P.O. Box 1450, Alexandria, VA
	)	22313-1450
)	
	)	Adam J. Forman
	)	Registration No.: 46,707

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Pre-Appeal Brief Request is being filed together with a Notice of Appeal and the appropriate fees.

REMARKS

The applicants believe that the rejections currently of record are not proper, and in fact are based on clear legal and factual deficiencies, each discussed separately below.

Claims 1-11, 21-22, and 24-26 are pending in the application. A final Office Action was issued in this application on May 25, 2007.

Claims 1-6, 8-11, and 24 stand rejected under 35 U.S.C. §103 as unpatentable over Takahashi (U.S. Patent No. 4,923,208) in view of Hartnestine (U.S. Patent No. 6,478,327). Claims 22 and 25-26 have been allowed. The official status of claim 7 is unknown, as is has not been identified as rejected in the detailed action. However, claim 7 has not been officially allowed.

The outstanding Office Action incorporates both factual and legal deficiencies.

Factual Deficiency

The Office Action correctly states that Takahashi fails to teach a latch mount as recited in the rejected independent claims 1 and 24. The Office Action therefore cites Hartenstine as disclosing a latch mount.

However, the structure cited in Hartenstine is not a latch mount either in structure or function. In fact, Applicant was unable to identify any disclosure in Hartenstine that the disclosed basket folds and unfolds independent from the folding and unfolding of the stroller frame as a whole. Hartenstine fails to teach or suggest any latch that can releasably engage the structure identified in the Office Action as a “latch mount,” and further fails to teach or suggest that such releasable engagement allows the basket to move between an open and closed position.

A number of legal deficiencies are also present in the Office Action, based at least in part on this clear factual deficiency.

Legal Deficiency

The combination of Takahashi and Hartenstine fail to render the rejected claims unpatentable in view of 35 USC 103 for a number of reasons.

First, as discussed above, Hartenstine fails to teach or suggest a latch mount, and therefore the combination of Takahashi and Hartenstine fail to teach or suggest a latch mount as recited in independent claims 1 and 24.

Second, Takahashi’s basket is already capable of moving between a closed position and an open position relative to the frame without the structure cited as Hartenstine’s “latch mount” (see, e.g., Takahashi Figs. 1 and 2). Specifically, Takahashi discloses a basket frame 71 that supports a bag or basket 72. A stopper 8 is disposed at the base of the bag 72. The stopper 8 includes a U-shaped handling portion (or mounting portion) 82 and a projection 81. A step plate 9 is disclosed at the base of the carriage, and includes an engagement hole 91. During operation, the bag can be maintained in the open configuration by fitting the projection 81 into the engagement hole 91. The bag can be closed by removing the projection 81 from the engagement hole 91, and mounting the handling portion 82 onto the crossbar of the basket frame. The handling portion 82 is thus mountable onto the crossbar of the basket frame without employing a latch. Given that incorporating Hartenstine’s basket “latch mount” into Takahashi would not enhance functionality of Takahashi for its intended

purpose (and in fact would result in adding extra unnecessary parts to Takahashi's teachings), one skilled in the art would not be motivated to combine the teachings of Hartenstine into Takahashi.

Third, while the Office Action alleges that incorporating Hartenstine into Takahashi would allow Takahashi's basket to move between an open and closed position (something Takahashi accomplishes without combining with Hartenstine), Applicant has found no teaching in Hartenstine that Hartenstine's basket is capable of moving between an open and closed position. The only teaching Applicant found within Hartenstine of relative movement between the basket and the frame is when the frame is collapsed for storage (see Col. 7, line 65 – Col. 8, line 49). Hartenstine does not, however, disclose articulating the basket between an open and a closed position relative to the frame in the manner recited in claim 1. Takahashi teaches away from the relative movement disclosed in Hartenstine because Takahashi's basket is movable between an open and a closed position while maintaining the baby carriage in an operating position. Incorporating Hartenstine into Takahashi would render Takahashi unsuitable for its intended purpose of moving the basket between open and closed positions while the baby carriage remains operational.

Fourth, Takahashi teaches away from modification by combining Hartenstine's "latch mount" into the Takahashi disclosure. Specifically, Hartenstine teaches a structure (identified in the Office Action as a latch mount) mounted onto the rear portion of the frame. Takahashi, however, discloses that the handling portion 82 has a U-shaped profile that is adapted to be mounted on and engaged with a rear edge portion of the frame member 71 (See Takahashi, Col. 4, lines 56-60). Accordingly, Takahashi teaches away from mounting the handling portion onto Hartenstine's "latch mount" because the "latch mount" is not a rear edge portion of the Hartenstine's frame member, but rather is a structure that is mounted onto the frame member. Moreover, Fig. 1 of Hartenstine clearly illustrates the "latch mount" as a protrusion from the cylindrical cross member 52C. The protrusion has a shape that would not be amenable to mounting a member having a U-shaped channel, and as a result, Takahashi's U-shaped handling portion 82 would not adequately (if at all) engage the Hartenstine's "latch mount" when closing the bag 72. As noted above, Takahashi's U-shaped handling portion 82 is specifically configured to mount onto the round cross member of the frame, and not onto a differently shaped protrusion from the cross member. For this second reason, independent claims 1 and 24 are patentable over the cited prior art. Because Takahashi teaches away from Hartenstine, claims 1 and 24 are patentable over the cited prior art.

Fifth, while the shape of the outer surface of Hartenstine's "latch mount" could conceivably be modified to provide a surface that reliably engages the U-shaped handling portion 82 of the stopper 8, such modification is not taught or suggested in the prior art. Furthermore, one having ordinary skill in the art would not be motivated to modify the latch mount. Rather, the teachings of the prior art references would motivate the skilled artisan to remove the "latch mount" from Hartenstine's cross member altogether so that the U-shaped handling portion 82 would mount directly to the cross member in the manner described in Takahashi. Such a system, however, would fail to teach or suggest a latch mount directly mounted on the rear cross member, as recited in claims 1 and 24.

For at least the above reasons, the cited prior art fails to render independent claims 1 and 24 obvious, and Applicant asserts that independent claims 1 and 24 are patentable over the cited prior art. Applicant further cites the patentability of independent claim 1 as providing sufficient basis for the allowability of corresponding dependent claims 2-6 and 8-11.

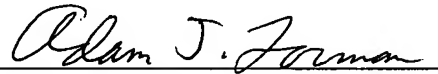
Furthermore, Applicant found no teaching or suggestion in the cited prior art that renders the elements of claim 7 unpatentable. Formal allowance of claim 7 is also respectfully requested.

For at least the reason that the claims are patentable over Takahashi and Hartenstine, the outstanding rejections of the independent claims and corresponding dependent claims should be withdrawn. This paper is certainly not intended to be all-inclusive of each and every reason that the rejection of the claims should be withdrawn. There are additional reasons that will be set forth in detail at a later date, if and when appropriate.

This paper is submitted under the Pre-Appeal Brief Request Pilot Program and sets forth only those clear legal and factually deficiencies in the rejections noted by the applicants.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

Respectfully submitted,

A handwritten signature in cursive script that reads "Adam J. Forman". The signature is written in dark ink and is positioned above a horizontal line.

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June 28, 2007